

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 757 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No,

K S DIESELS LTD

Versus

RAJKOT MUNI. CORPN

Appearance:

MR SI NANAVATI for Petitioners

MR ARUN H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 03/08/96

ORAL JUDGEMENT

M/s K.S. Diesels Ltd. has preferred the present petition under article 226 of the Constitution of India for quashing the order passed by the respondent of levying penalty of ten times of the levy of the octroi

duty payable by the petitioner to the respondent corporation. The petitioner is a manufacturing concern and is manufacturing fuel injection equipments and heavy duty shock absorbers and other allied items in Rajkot. They have to import certain goods within the municipal limits of Rajkot municipal corporation as their factory is situated within the limits of Rajkot Municipal Corporation. Present petitioner had purchased Industrial Oils and Industrial Paints from Indian Oil Corporation and Goodlass Narolac Paints Ltd. within the municipal limits without paying necessary duty of Rs. 2,492/-. When the officer of the respondent corporation visited their godown he found that the goods were imported without making payment of octroi duty of Rs. 2,492/-. Thereupon, he made a report of the same. The respondent corporation then issued notice on 23.11.84 calling upon the petitioner to pay the amount of Rs. 2,492/ and the amount of Rs. 24,825/-, towards octroi duty and penalty respectively; otherwise to face necessary consequence thereof. The petitioner on receipt of the said notice issued cheque in respect of octroi duty and penalty in favour of the Rajkot Municipal Corporation and then rushed to this court by way of filing the present petition.

2. The petitioner has contended that levy of the said penalty is illegal, ultravires as no opportunity of being heard was given to the petitioner before levying such penalty. The petitioner further contends that levying of penalty without hearing the petitioner is against the principles of natural justice and against the Rule of Law. He therefore, seeks to quash the levying of the said penalty by the respondent.

3. The claim of the petitioner is resisted by the respondent. It is contended by the respondent that the claim of the petitioner that the respondent had no authority to levy the said penalty is false and it is contended that under Rule 26 the Rajkot Municipal Corporation has got the powers to levy the penalty upto ten times. It is further contended that there are reasons for levying said penalty to the present petitioner and the petitioner has not come with clean hands before the Court. The petitioner had issued a cheque for the payment of the full amount and had subsequently stopped payment of the same and has approached this court by way of this petition. It is contended that the act of the petitioner is such that no lenient view can be taken in the matter of penalty to the present petitioner. Thus it is contended that the petition be dismissed.

4. It may be mentioned further here that after the filing of the present petition in the year 1985, the petitioner has obtained stay order from this court for payment of 50 percent of the penalty and that order is in operation for the last 11 years.

5. Rule 27 of the Rajkot Municipal Corporation clearly lays down that respondent corporation has got right to levy the penalty upto 22 times. It is an admitted fact that the Rajkot Municipal Corporation had issued notice to the present petitioner and by the said notice the respondent corporation to pay an amount of Rs. 27,417/- towards additional octroi and an amount of Rs. 24,925/- towards penalty besides the amount of Rs. 2,492/- . In the said notice it was further mentioned that the cheque issued by the petitioner on 27.7.84 has been returned by the bank and if the petitioner failed to deposit the said amount, then the corporation will be constrained to take necessary legal action against the petitioner. When this notice at Annexure.C dated 23.11.84 was issued to the petitioner, the petitioner had the opportunity to make his representation to show as to how the corporation was not justified in levying the said penalty. It must be also further mentioned that neither i Rule 27 nor any other provision of the Municipal Corporation Act lays down that the petitioner ought to have given the opportunity of being heard before levying penalty. When the petitioner had not disputed the fact that the goods were imported in the municipal corporation without paying octroi duty , the petitioner will have to pay octroi duty and therefore, there is no question of further hearing him as regards quantum of penalty. Payment of octroi is payment of public money which is to be utilised for public good. The money which the corporation has to recover towards the octroi is also for public purpose and it is to be utilised for benefit of public and therefore, if a person avoids payment of such public money and if the law provides for levying penalty on such money, it is not at all necessary to hear the concerned person who has admitted of having committed the misconduct. It must be mentioned that it is not the case of the petitioner that the petitioner himself has voluntarily gone to the corporation and had made payment of octroi duty when it came to its notice that its workers had failed to pay octroi. On the contrary there was inspection of the godown of the petitioner for non payment of the octroi duty by the officials of the corporation. Therefore, in the circumstances, there are no reasons for holding that the corporation should have taken a lenient view in awarding the penalty to the

petitioner.

6. It must be remembered that under the provisions of BPMC Act , which governs the respondent corporation, there is a specific provision for launching prosecution for avoiding payment of octroi duty . Rule 27 empowers the corporation to levy penalty and to refrain from prosecuting a person in case if the person accepts to pay octroi duty and the penalty. Now in the instant case the petitioner had initially accepted the payment of octroi and he had also agreed to pay penalty to be levied by the corporation. By making such an acceptance, the petitioner did avoid criminal prosecution. Under the law the petitioner could have been prosecuted as well as could have been penalised by the corporation. The prosecution and conviction of the accused under the Municipal Corporations Act would not have avoided his liability to pay octroi. In the instant case, the petitioner accepted and given willingness to make payment of octroi duty and has also avoided prosecution and in the circumstances levy of penalty made by the corporation could not be said to be illegal or improper. I therefore, hold that the petition will have to be dismissed and the same is dismissed.

7. The petitioner has already obtained the stay order from this court and by the said stay order he has avoided to make payment of 50 percent of the penalty. By the order of this court, the corporation is denied receipt of the amount which the respondent corporation was to get is a public body established for public purpose and when the respondent has been deprived of the said amount by the order of this court and when the petitioner has benefitted by the orders of this court, I hold that it is the duty of the court to work out the equity in favour of the respondent in view of the stay order of 50 percent penalty on the octroi duty with 12 percent interest i.e. the amount which has been stayed by this court.

8. The learned advocate for the petitioner has brought to my notice that the petitioner has already furnished bank guarantee and the respondent is entitled to encash the bank guarantee and there will be no question of making payment of 50 percent of the amount. This demand of the petitioner is justified and the petitioner is granted 6 weeks time, from the date of receipt of the writ of this court, to pay the interest. Rule discharged. Ad interim relief granted earlier stands vacated. No order as to costs.

(S.D.Pandit.J)